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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
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11 TERRANCE O. STEWART,
12 Petitioner,
13 v.
14 WILLIAM HUTCHINGS, et al.
15 Respondents.
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Case No. 2:20-cv-01046-RFB-NJK

ORDER

17 This is a habeas corpus action under 28 U.S.C. § 2254. Currently before the court are
18 petitioner Terrance Stewart's counseled motion to withdraw and a proper-person motion to
19 withdraw counsel and to proceed pro per. ECF No. 18, 19. Stewart and counsel fundamentally
20 disagree about how to proceed with the case. The court finds that the interests of justice no longer
21 require counsel to represent Stewart, and the court grants these motions.

22 Also before the court is the motion to vacate deadline for second amended petition. ECF
23 No. 21. The court grants this motion because the court is allowing counsel to withdraw.

24 Next before the court is Stewart's application to proceed in forma pauperis. ECF No. 23.
25 The application is moot because Stewart already has paid the filing fee.

26 Stewart has filed a second amended petition pro se. ECF No. 22. The court has reviewed
27 it under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts.
28 Respondents will need to file a response to it.

1 Respondents have filed a motion for clarification and new scheduling order. ECF No. 24.
2 Stewart's second amended petition (ECF No. 22) is the operative pleading, and the court will set
3 the briefing schedule below.

4 IT THEREFORE IS ORDERED that the motion to withdraw (ECF No. 18) and the motion
5 to withdraw counsel and to proceed pro per (ECF No. 19) are **GRANTED**. The Federal Public
6 Defender's representation of petitioner is terminated.

7 IT FURTHER IS ORDERED that the vacate deadline for second amended petition (ECF
8 No. 21) is **GRANTED**.

9 IT FURTHER IS ORDERED that the application to proceed in forma pauperis (ECF No.
10 23) is **DENIED** as moot.

11 IT FURTHER IS ORDERED that the clerk of the court change petitioner's address to
12 Terrance Stewart, 1096002, Lovelock Correctional Center, 1200 Prison Rd., Lovelock, NV 89419,
13 with arrangements for petitioner to file and to receive documents by email through that prison's law
14 library.

15 IT FURTHER IS ORDERED that respondents must file a response to the second amended
16 petition (ECF No. 22), including potentially by motion to dismiss, within 60 days of entry of this
17 order and that petitioner may file a reply within 30 days of service of an answer. The response and
18 reply time to any motion filed by either party, including a motion filed in lieu of a pleading, will be
19 governed instead by Local Rule LR 7-2(b).

20 IT FURTHER IS ORDERED that any procedural defenses raised by respondents to the
21 petition must be raised together in a single consolidated motion to dismiss. In other words, the
22 court does not wish to address any procedural defenses raised herein either in serial fashion in
23 multiple successive motions to dismiss or embedded in the answer. Procedural defenses omitted
24 from such motion to dismiss will be subject to potential waiver. Respondents must not file a
25 response in this case that consolidates their procedural defenses, if any, with their response on the
26 merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking
27 merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they must
28 do so within the single motion to dismiss not in the answer; and (b) they must specifically direct

1 their argument to the standard for dismissal under § 2254(b)(2) set forth in Cassett v. Stewart, 406
2 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, may be
3 included with the merits in an answer. All procedural defenses, including exhaustion, instead must
4 be raised by motion to dismiss.

5 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents must
6 specifically cite to and address the applicable state court written decision and state court record
7 materials, if any, regarding each claim within the response as to that claim.

8 DATED: January 5, 2022.



RICHARD F. BOULWARE, II
United States District Judge